STATE OF MICHIGAN

COURT OF APPEALS

G. GORDON HILEMAN and CATHERINE A. HILEMAN, Plaintiffs-Appellees, v RONALD A. STROZESKI,[1] Defendant-Appellant, and PATRICIA J. STROZESKI, OAKWOOD HILLS FARM LLC, ERIC HOFSTRA, and LEWISTON SEPTIC SERVICE LLC, Defendants.	UNPUBLISHED May 30, 2013 No. 302422 Montmorency Circuit Court LC No. 08-001932-CK

Before: RONAYNE KRAUSE, P.J., and GLEICHER and BOONSTRA, JJ.

PER CURIAM.

Defendants appeal by right the trial court's postjudgment order awarding costs and certain fees to plaintiffs. This case arises out of the Hilemans' purchase of certain real property from the Strozeskis, and, significantly, a right of first refusal to purchase other property that the Strozeskis subsequently attempted to convey to Eric Hofstra. The trial court granted specific performance in favor of the Hilemans and ordered that the property be sold at its fair market value as of the date the Hilemans attempted to exercise their right of first refusal. The trial court subsequently granted the Hilemans costs and fees for performing an appraisal of the property.

[1] For consistency with the trial court proceedings, we will refer to "the Hilemans" and "the Strozeskis," even though Patricia J. Strozeski is not participating in this appeal.

The Strozeskis appeal, contending that the motion to tax costs was fatally noncompliant with the applicable court rules. We affirm.[2]

This Court reviews a trial court's grant of costs pursuant to MCR 2.625 for an abuse of discretion. *Guerrero v Smith*, 280 Mich App 647, 670; 761 NW2d 723 (2008). The trial court's findings of fact are reviewed for clear error unless those findings "may have been influenced by an incorrect view of the law." *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000). Questions of law are reviewed de novo. *Id*.

The Strozeskis first argue that the motion to tax costs was not filed within 28 days of the judgment, as required by MCR 2.625(F)(2). We disagree. The trial court signed an opinion and order granting summary disposition in favor of the Hilemans on May 19, 2009, that explicitly did not address damages. The trial court's order signed on September 29, 2010, adjudicated the remainder of the parties' rights and liabilities by determining damages and the final outcome of ordering the sale of the property at a particular price. The Hilemans filed their motion to tax costs on October 25, 2010, less than 28 days later.

"'A judgment is defined as the final consideration and determination of a court of competent jurisdiction on the matters submitted to it.'" *Clohset v No Name Corp*, 296 Mich App 525, 536; 824 NW2d 191 (2012), quoting 6A Michigan Pleading & Practice (2d ed, 2003), § 42:1, p 235. In the context of MCR 2.403, and by extension in similar court rule contexts, "the judgment" has likewise been defined as "the judgment adjudicating the rights and liabilities of particular parties." *Kopf v Bolser*, 286 Mich App 425, 432; 780 NW2d 315 (2009). Because the May 19, 2009 order adjudicated most of the parties' rights but did not determine all of their liabilities, i.e., damages, it could not have been "the judgment" contemplated by MCR 2.625(F)(2), even if it would theoretically have been possible to determine the total court costs at that time. The September 29, 2010 order constituted "the judgment" for purposes of MCR 2.625(F)(2), so the motion to tax costs was timely.

The Strozeskis next argue that the motion to tax costs lacked the "verification" required by MCR 2.625(G)(2). We disagree.

Pursuant to MCR 2.625(G)(2), "the bill of costs must be verified and must contain a statement that (a) each item of cost or disbursement claimed is correct and has been necessarily incurred in the action, and (b) the services for which fees have been charged were actually performed." The Hilemans correctly point out that nothing in the court rule requires a separate affidavit, and even if it did, there is no requirement that the separate affidavit must be on a physically separate piece of paper. A valid affidavit "must be (1) a written or printed declaration or statement of facts, (2) voluntarily made, and (3) confirmed by the oath or affirmation of the party making it, taken before a person having authority to administer such oath or affirmation." *Sherry v East Suburban Football League*, 292 Mich App 23, 31; 807 NW2d 859 (2011).

[2] The Strozeskis initially attempted to appeal the trial court's substantive orders, but failed to do so within the requisite time period for a claim of appeal from the final judgment in this matter and did not make a delayed application for leave to appeal.

The motion to tax costs included a "verification" on the last page, after the signature of the Hilemans' attorney in his role as attorney. The verification explicitly stated, among other things, that "each item of costs or disbursement claimed above is correct and has been necessarily incurred in the above action; that services provided which fees have been charged were actually and necessarily performed . . . " The "verification" was signed and notarized separately. The Hilemans appear to have included a perfectly valid separate affidavit that simply was not physically isolated on its own piece of paper, which is not a necessary element of a valid affidavit. Because it purports to verify the correctness, necessity, and actuality of the claimed costs and fees, it appears to serve as the "verification" required by the court rule.

The Strozeskis argue that the extensive invoice attached as Exhibit A to the Hilemans' motion to tax costs lacked highlighting specifying the particular costs claimed. The copy in the lower court record *does* contain highlighting. According to our calculations, the highlighted costs total $2,313.98. This matches the actual costs awarded by the trial court. Attached as Exhibit B to the motion to tax costs is a four-page invoice for appraisals with a "total amount due" on each page, the combined total of which we calculate as $3,560.00. This matches the expert witness fees awarded by the trial court. The Strozeskis contend that the evidence shows only $1,080 in appraisal costs, which would be accurate if only the first page of the appraisal invoice existed, but simply overlooks the remaining pages. The trial court did not commit clear error.

Affirmed.

/s/ Amy Ronayne Krause
/s/ Elizabeth L. Gleicher
/s/ Mark T. Boonstra